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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT-OST-2011-0098]

RIN: 2105-AD87

Nondiscrimination on the Basis of Disability in Air Travel; Accessibility of Aircraft and Stowage of Wheelchairs

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation is issuing a final rule to allow airlines to use the seat-strapping method (placing a wheelchair across a row of seats using a strap kit that complies with applicable Federal Aviation Administration or foreign government regulations on the stowage of cargo in the cabin compartment) to transport a passenger's manual folding wheelchair in the cabin of aircraft.

DATES: This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: Amna Arshad or Blane A. Workie, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, (202) 366-9342 (phone), 202-366-7152 (fax), amna.arshad@dot.gov or blane.workie@dot.gov (e-mail).

Arrangements to receive this notice in an alternative format may be made by contacting the above named individuals.

SUPPLEMENTARY INFORMATION:

Background

The Air Carrier Access Act (ACAA) prohibits discrimination by U.S. and foreign carriers against passengers with disabilities. (See 49 U.S.C. 41705) Its implementing regulation, 14 CFR Part 382 (Part 382), contains detailed standards and requirements to ensure carriers provide nondiscriminatory service to passengers with disabilities. A requirement that U.S. carriers provide in-cabin space for a folding passenger wheelchair was originally adopted in 1990. (55 FR 8007.) At that time the Department's intention was that new aircraft would have a designated space (e.g., a closet or similar compartment) in which one passenger's wheelchair could be stowed. The practice of seat-strapping, placing a wheelchair across a row of seats using a strap kit that complies with applicable Federal Aviation Administration (FAA) or foreign government regulations on the stowage of cargo in the cabin compartment, was not authorized in the regulatory text or even mentioned in the original rulemaking. However, it was subsequently permitted under Department enforcement policy as an alternative to compliance with the regulation's requirement with respect to accommodating a passenger's manual folding wheelchair in the cabin on covered aircraft (aircraft with a design passenger seat capacity of 100 or more seats that were ordered after April 5, 1990, or delivered after April 5, 1992). Whenever we reference passenger seating capacity in this or other economic or civil rights aviation rulemakings, we are referring to the manufacturer's designed seating capacity.

Part 382 was updated on May 13, 2008, to cover foreign air carriers, among other things. (73 FR 27614.) The Department determined in the final rule issued in 2008 that it was best not to retain the seat-strapping policy in the new rule with respect to new aircraft (i.e., aircraft ordered after May 13, 2009, or delivered after May 13, 2010), and required, consistent

with the intent of the original 1990 rule, that new aircraft be capable of accommodating a passenger's wheelchair in a priority stowage space in the cabin. See 14 CFR 382.123(c). The Department made this decision because of concerns that seat-strapping: (1) is an awkward way of transporting a wheelchair in the cabin; (2) can result in less timely stowage and return of the passenger's wheelchair; (3) can be more conspicuous and bring unwanted attention to passengers with disabilities; (4) can more likely result in damage to the passenger's wheelchair; and (5) can result in last-minute surprise denials of service to other passengers holding confirmed tickets on full flights. Existing covered aircraft were not required to be retrofitted, however, and airlines could continue to use seat-strapping on those aircraft.

Within six months of issuance of the May 13, 2008, final rule, the Department received two requests to continue the use of seat-strapping. The Department also received a request to stow a passenger's manual folding wheelchair in a designated cargo stowage space as an alternative to stowing the passenger's wheelchair in the cabin of aircraft. These requests were submitted pursuant to the "equivalent alternative" provision of the May 13, 2008, final rule, which allows carriers to request a determination that a carrier's policy, practice, or other accommodation provides substantially equivalent accessibility to passengers with disabilities, as compared with that provided under a specified provision of Part 382. (See 14 CFR 382.9.)

The Department denied the two requests to continue the use of seat-strapping because it was contrary to the explicit language of the rule and because a change in the substance of the rule must be addressed through rulemaking. (See Response to Application of JetBlue Airways Corp. for an Equivalent Alternative Determination from 14 CFR 382.123(c), Docket DOT-OST-2008-0273-0063 (filed July 22, 2009); Response to Application of US Airways, Inc. for an Equivalent Alternative Determination from 14 CFR 382.123(c), Docket DOT-OST-2008-0273-0064 (filed

July 22, 2009).) The Department, however, granted a request to stow a passenger's manual folding wheelchair in a designated cargo stowage space as an alternative to stowing the wheelchair in the cabin, on a one-year trial basis, subject to numerous conditions to ensure the same or greater accessibility to persons with a disability. (See Response to Application of Aerovias Del Continente Americano S.A., for an Equivalent Alternative Determination from 14 CFR 382.67 and 14 CFR 382.123, Docket DOT-OST-2008-0273-0101.) On June 3, 2011, the Department published a Notice of Proposed Rulemaking (NPRM) entitled "Nondiscrimination on the Basis of Disability in Air Travel; Accessibility of Aircraft and Stowage of Wheelchairs" in the Federal Register. The Department announced in the NPRM that it was considering amending the rule addressing the stowage of wheelchairs in aircraft cabins. The Department sought comment on whether it should modify the provisions in the May 13, 2008, rule pertaining to the stowage of one passenger's manual folding wheelchair in the cabin of aircraft with 100 or more passenger seats (§382.67) in order to allow the continued use of the seat-strapping method.

In the NPRM, the Department asked a series of questions in the following broad categories to assist it in determining the impact of seat-strapping on passengers with a disability, other members of the traveling public, and carriers: (1) potential stigmatization associated with the seat-strapping method and impact on other passengers that may result from the seat-strapping method; (2) compliance cost if the prohibition on the use of the seat-strapping method remains; (3) complaints relating to damage to wheelchairs or delay in the stowage and return and of a passenger's wheelchair; (4) training of carrier employees; (5) identification of priority space for assistive devices; (6) additional accommodations that may be required if the seat-strapping method is permitted; and (7) other miscellaneous questions.

The Department received fifteen comments in response to the NPRM. Of these, seven comments were from airlines, representing the views of Virgin Atlantic Airways, Spirit Airlines, JetBlue Airways, Virgin America, United Airlines, US Airways, and Societe Air France. One airline association, the Air Transport Association of America (now Airlines for America), submitted a comment. Disability organizations including Paralyzed Veterans of America and the Disability Rights Education and Defense Fund each submitted a comment. Finally, five individual consumers submitted comments. The Department has carefully reviewed and considered the comments received. The commenters' positions that are germane to the specific issues raised in the NPRM are set forth below, as is the Department's response.

Summary of Final Regulatory Analysis

The final regulatory evaluation concludes that the monetized benefits of the final rule exceed its monetized costs, even without considering non-quantifiable benefits. This evaluation, outlined in the table below, finds that the expected net present value of the benefits of the rule over 20 years, at a 7% discount rate, will amount to \$242 million to \$272 million.

		Present value (millions)
Total Quantified Benefits	20 years, 7% discounting	\$243 to \$273.
Total Quantified Costs*	20 years, 7% discounting	\$0.6
Net Quantified Benefits	20 years, 7% discounting	\$242 to \$272.

* This rule will only impose monetary costs on carriers.

Information on additional benefits and costs for which quantitative estimates could not be developed is provided in the Regulatory Analysis and Notices section.

Comments and Responses

1. Potential Stigmatization and Impact on Other Passengers

Questions posed in NPRM:

We asked whether there are concerns over potential stigmatization or embarrassment associated with the seat-strapping method, including how a passenger with a wheelchair might feel if he or she is made aware that other passengers might be denied boarding in order to accommodate the wheelchair in the cabin. We requested carriers to share what procedures are currently used to minimize potential stigmatization or embarrassment associated with the seat-strapping method. We also asked whether passengers had any other concerns associated with the use of the seat-strapping method such as increased likelihood of denied boardings and requested carriers provide information regarding the number of passengers denied boarding per year due to the use of the seat-strapping method.

Comments:

In general, the airlines and the Air Transport Association of America (ATA) favor the use of seat-strapping to stow a passenger wheelchair in the cabin of aircraft and state that it is a safe and well-tested method of wheelchair stowage. Several airlines state that they receive very few onboard wheelchair requests and that it is extremely rare for seat-strapping to result in a denied boarding of another passenger. These commenters believe that the concern over potential stigmatization or embarrassment associated with the seat-strapping method is unfounded and state that they have no complaints in their records from passengers to support this concern. Several airlines note that it has been their experience that some passengers are reassured by the visibility of their wheelchairs while seat-strapped in the cabin.

Airlines additionally state that current procedures prevent stigmatization from happening as seat-strapping is done during the pre-boarding process and the wheelchair is not identified with the passenger. Several airlines also state that they speak to passengers with disabilities in private and do not involve them in discussions with passengers that may be denied boarding.

Spirit Airlines states that it blocks the row used for seat-strapping from advance seat assignment and it is only assigned at the airport after all other seats have been filled in order to minimize the possibility of moving or denying boarding to other customers and any potential stigmatization. According to the ATA, pre-boarding procedures, voluntary bumping, and blocked seating for in-cabin wheelchair requests are all procedures that can be implemented to minimize stigmatization and impact on other passengers. Virgin Atlantic Airways is the only airline that did not favor seat-strapping, as its current practice is to stow wheelchairs in designated closets in the cabin of the aircraft. It states that seat-strapping would cause a rise in denied boarding situations resulting in inconvenience for other passengers.

Individual commenters and disability associations oppose the seat-strapping method and believe it is an awkward and unsafe method of transporting a wheelchair in the cabin. According to these commenters, the stigmatization of passengers who choose to have their wheelchair stowed in the cabin and the possibility of denied boardings are likely consequences of seat-strapping. They state that seat-strapping is done in front of all passengers, which would cause other passengers to complain about a wheelchair taking up two seats. One individual commenter shared an incident where he requested seat-strapping, which the airline did in the first row of the aircraft in front of all the passengers, and he overheard two passengers commenting on how rude he was for causing two individuals to be denied boarding. Another passenger shared a similar story where the airline reportedly made a scene of the seat-strapping while people were entering the aircraft, and another incident where she had requested to stow her wheelchair in the cabin and the airline told her the flight was full and that they had no closet. These commenters believe that a designated onboard stowage space would satisfy their ability to store their wheelchair safely without adversely impacting other passengers.

DOT Response:

Having fully considered the comments, the Department has decided to allow carriers to use the seat-strapping method to stow a passenger's manual folding wheelchair in the cabin of aircraft. Based on the comments received, the Department has concluded that the seat-strapping method is an acceptable alternative to a closet or similar stowage space for wheelchair stowage in the cabin because carriers can minimize any stigmatization and impact on other passengers by implementing alternative procedures such as voluntary bumping in exchange for compensation, allowing passengers with wheelchairs to pre-board, blocking seats to accommodate wheelchair stowage requests, and strapping the wheelchair to the seats during the pre-boarding process. The Department emphasizes that carriers must take specific well-defined measures such as these to ensure that the use of the seat-strapping method does not result in stigmatization or embarrassment of the passenger choosing to stow their wheelchair in the cabin.

2. Compliance Cost

Questions posed in NPRM:

We asked about costs to carriers if prohibition on the use of the seat-strapping method continued and about any effects, other than cost, that the continued prohibition would have on carriers. We sought comment on the benefits to using the seat-strapping method, aside from cost savings to carriers, over the requirement to have a priority stowage space. We also requested information regarding any increased costs to carriers that would result from allowing the seat-strapping method.

Comments:

The airlines and the ATA are concerned about compliance cost if the prohibition on the use of the seat-strapping remains. These commenters state that in addition to the cost of adding

an in-cabin closet or similar stowage space in each new aircraft, which ranges from \$25,000 to \$75,000 per aircraft, the airlines would face millions of dollars of lost revenue over the life of each aircraft due to the permanent loss of a row of seats. These commenters state that a ban on seat-strapping would lead to fewer permanent seats for passengers, and they contend that seat-strapping would allow airlines to offer lower fares for consumers. According to these commenters, seat-strapping provides an equivalent alternative to a dedicated stowage space for a wheelchair in the cabin at a fraction of the cost.

Virgin Atlantic states that it stows wheelchairs in designated closets in the cabin of the aircraft and that it would incur great expense if it were required to use the seat-strapping method, including the price to purchase and deploy seat-strapping kits, the cost of training crew on how to safely strap wheelchairs, training ground crew on how to ensure proper handling of denied boarding situations, and creating, printing and distributing materials such as procedures, notices and training manuals.

DOT Response:

Given that almost all the commenting carriers have stated that they have not received any passenger complaints against the seat-strapping method, and given the dearth of public comments against this method, the Department feels it would not be justified in burdening the carriers with the cost of a designated wheelchair stowage space in the cabin of their aircraft, particularly with respect to the permanent revenue loss from removing a row of seats. With proper safeguards, the Department believes seat-strapping can be an effective means of transporting wheelchairs.

Virgin Atlantic's concern is misplaced. The Department is not requiring carriers to use the seat-strapping method; it is simply authorizing this procedure as an option. Virgin and all

other carriers remain free to use a closet or similar space in the cabin to accommodate passenger wheelchairs if they choose. We note, however, that this final rule requires carriers to be able to stow two folding manual passenger wheelchairs on any covered aircraft, as opposed to the prior requirement to be able to stow one such chair, if the carrier chooses to use the seat-strapping method for wheelchair stowage and if stowing a second passenger wheelchair in the cabin would not displace additional passengers.

3. Complaints Regarding Damage to Wheelchairs and Timely Stowage and Return of a Passenger's Wheelchair

Questions posed in NPRM:

We asked for commenters to share any concerns they have regarding damage to a wheelchair or less timely stowage and return of a wheelchair if the seat-strapping method is allowed. We also asked whether there were any complaints received regarding wheelchair damage from using the seat-strapping method or from stowing a wheelchair in a priority space in the cabin.

Comments:

According to the ATA and the airlines, complaints regarding damage to wheelchairs are extremely rare. Almost all of the airlines reported that they have no complaints related to in-cabin wheelchair stowage in their records. Additionally, according to the ATA, its members have no complaints in their records related to wheelchair damage as a result of seat-strapping. These commenters also state that seat-strapping does not result in less timely stowage or retrieval than if the wheelchair was stowed in a closet.

Individual commenters and disability associations state that seat-strapping can result in less timely stowage and return of the passenger's wheelchair. The Paralyzed Veterans of

America (PVA) believes that it is likely that a carrier would place the wheelchair in the last row of seats, rather than the first, which could cause it to be the last item off the plane, and that a seat-strapped wheelchair is more susceptible to damage as it is exposed to other people, carry-on baggage, and food or beverage carts. Also, PVA states that the securement process itself could cause damage to the wheelchair if an employee is not properly trained in the procedure. These commenters believe that a designated closet space would resolve all of these concerns.

DOT Response:

The Department feels there is insufficient data to support the comments that assert that seat-strapping will result in damage to wheelchairs or increased incidents of denied boarding. We do not need to speculate about the potential impact of seat-strapping, as the process has been in use for more than ten years. According to the airlines, there are no passenger complaints in their records about wheelchair damage as a result of seat-strapping. The Department also has not received any complaints about wheelchair damage as a result of the use of the seat-strapping method. With respect to timely stowage and return, the Department has concluded that since a passenger's wheelchair is generally the last item an airline removes from the cabin (whether it is stowed in the closet or in the first or last row of the aircraft), a delay in stowage or return is unlikely. In addition, the Department has not received any complaints regarding untimely stowage or return of a passenger wheelchair as a result of the use of the seat-strapping method.

4. Training

Questions posed in NPRM:

We asked carriers how they currently ensure that their employees know that passengers can use the seat-strapping method to stow wheelchairs. We also asked whether the existing requirement for carriers to train their public contact employees to proficiency on the proper and

safe operation of any equipment used to accommodate passengers with a disability is sufficient to ensure carrier employees know the proper manner in which to stow a wheelchair across a row of seats using a strap kit.

Comments:

According to the comments from the airlines and the ATA, carriers currently provide training to crewmembers, airport agents, and Complaint Resolution Officials (CROs – disability specialists) on the seat-strapping method, and include this method in various operation manuals. Instructions are also included with the seat-strapping kits. These commenters believe that the seat-strapping method is just as efficient as storing a wheelchair in a closet and state that this is supported by the fact that there are no complaints from passengers to support damage or delayed returns of wheelchairs as a result of seat-strapping. One individual noted that she requested to have her wheelchair stowed in the cabin and it appeared to her that the airline representative she was interacting with was not trained to do it.

DOT Response:

The Department has considered all of the comments and emphasizes the importance in training airline personnel to ensure that passenger wheelchairs are handled in a safe and proper manner to avoid any damage. Given that airlines are responsible for any damage resulting from mishandling of the wheelchairs or improper stowage using the seat-strapping method, the Department believes it is in the airlines' best interest to ensure proper training of their personnel in utilizing the seat-strapping method.

5. Identification of Priority Space for Stowage of Assistive Devices

Questions posed in NPRM:

We asked whether the Department should require carriers to visually identify via a placard or other mechanism that wheelchairs, other mobility aids, and other assistive devices have priority for stowage in the cabin compartment over other items. We also inquired as to whether there was any benefit in requiring airlines to inform passengers of the location of the seats where a folding manual wheelchair may be stowed.

Comments:

The airlines and ATA believe that there are no benefits to identifying priority space for the stowage of assistive devices or informing passengers of the location of seats where a folding manual wheelchair may be stowed. They state that a placard or other visual identification would lead to further stigmatization or embarrassment of passengers who wish to stow their wheelchairs onboard the aircraft. Virgin Atlantic Airways notes that a placard is used to identify the location for the crew and it is not necessary for the passenger to know of the location as the passenger would be unable to retrieve their own wheelchair without assistance. The ATA notes that there is no benefit to informing the passengers of the location of the space as it may be different on various aircraft and may change due to inoperable seats, or an aircraft change may change the stowage location. However, the ATA states that if the Department adopts this requirement, it should limit it to information provided at the airport, since gate agents typically have this information on hand. JetBlue Airways states that it has found it beneficial to provide passengers with notice on its Web site that seats designated for passengers with disabilities are not available for assignment until the day of travel and that passengers who request to sit in the row designated for seat-strapping may be relocated if a passenger requests onboard stowage.

In general, disability associations and individual commenters believe that carriers should visually identify the priority stowage space in the cabin in order to ensure that assistive devices

have priority for stowage in the cabin compartment over other items. The PVA and an individual commenter state that visual identification of the priority stowage space will educate air carrier and contract personnel as well as other passengers that the space is prioritized for passenger wheelchairs. Neither the disability associations nor the individual commenters addressed whether there was any benefit in requiring airlines to inform passengers of the location of seats where a folding manual wheelchair may be stowed via the seat-strapping method.

DOT Response:

The Department has reviewed and carefully considered the comments regarding the identification of priority space for stowage of assistive devices. With regard to whether carriers should be required to inform passengers of the location of the seats where a folding manual wheelchair may be strapped, the Department agrees with commenters that placing a placard or other visual identification on such seats would be of limited benefit and could potentially have a stigmatizing effect on passengers. Accordingly, the Department will not require visual identification of the seats where the seat-strapping method of carrying wheelchairs is utilized.

However, with regard to in-cabin closets, the Department is requiring carriers to visually identify via a placard or other mechanism that wheelchairs, other mobility aids, and other assistive devices must be stowed in this area with priority over other items, such as crew luggage. Travelers with disabilities have recounted stories of when airline personnel did not appear to know that their wheelchairs had priority for stowage in a closet over other items brought onto the aircraft by other passengers or crew enplaning at the same airport. Visual identification of the stowage space is expected to increase the likelihood that a passenger's wheelchair or other assistive device will be transported in the in-cabin closet where it is much less likely to be damaged during transport. Accordingly, the Department believes that there are

important benefits derived from requiring airlines to visually identify that assistive devices have priority in the closet.

6. Additional Accommodations if Seat Strapping Method is Allowed

Questions posed in NPRM:

We inquired whether the current dimensions of a wheelchair that must fit without disassembly in the priority space should be increased if the Department allows the use of the seat-strapping method, and if so, what those dimensions should be. We also asked if carriers should be required to accommodate more than one wheelchair in the passenger cabin when the stowage of additional wheelchairs would not displace other passengers.

Comments:

The airlines and the ATA believe that the current dimensions (13 inches by 36 inches by 42 inches or less) of a wheelchair that must fit without disassembly in the priority space should not be increased as these dimensions meet the needs of passengers and can readily be accommodated by seat-strapping. Virgin Atlantic Airways states that any larger size should only be required for wheelchairs that are seat-strapped, as the stowage closets are designed for the current dimensions.

The airlines and the ATA believe that accommodating more than one wheelchair is not necessary and should not be required. Airlines state that onboard stowage of wheelchairs is not common enough that it is necessary to require carriers to accommodate two passenger chairs. They note that requiring them to accommodate more than one wheelchair would necessitate additional seat-strapping kits and disrupt more passengers. The airlines further state that they should have the option to accommodate more wheelchairs if there is room in the cabin, but that it should not be a requirement.

DOT Response:

Based on the comments received, the Department does not see a need to change the dimensions of a wheelchair that must fit without disassembly in the priority space. However, the Department has decided to require carriers to accommodate one more folding wheelchair in the passenger cabin if the carrier uses the seat-strapping method for wheelchair stowage and if accommodating a second passenger wheelchair in the cabin would not displace other passengers. The Department believes that carriers choosing to use the seat-strapping method do not have the space constraints that carriers with an in-cabin closet have and would be able to accommodate a second wheelchair as long as it would not displace other passengers, thereby benefitting consumers at minimal to no cost. Carriers may choose to stow both wheelchairs in a single row of seats in a method accepted by the Federal Aviation Administration or applicable foreign government. The requirement to ensure that there is a priority space for at least two wheelchairs only applies to new aircraft (aircraft ordered after May 13, 2009, or delivered after May 13, 2010).

7. Other

Questions posed in NPRM:

We asked for comments on whether the Department should prohibit or allow U.S. and foreign carriers to remove existing closets or other priority spaces used for stowing a passenger's wheelchair in the cabins of aircraft covered by Part 382. We also asked whether the Department should allow the use of the seat-strapping method only on single-aisle aircraft on the basis that there is sufficient space for a closet or other priority stowage space on twin-aisle aircraft. We requested commenters to provide any information or data that are relevant to the Department's decision.

Comments:

One individual commenter contended that it is reasonable to require airlines to carry two wheelchairs in the cabin of twin-aisle aircraft. According to two individual commenters, the Department should prohibit carriers from removing existing closets or other priority stowage spaces. According to the ATA, the Department should allow the removal of the closet space as long as the carrier has other areas to stow other devices and also allow seat-strapping for both single and twin-aisle aircraft. JetBlue Airways states that the Department should not distinguish between single and twin-aisle aircraft and that the decision to seat-strap or stow in closets should remain with the carriers.

DOT Response:

After considering the comments, the Department sees no compelling reason to limit carriers' options with respect to stowing passengers' wheelchairs in the cabin and has decided to allow carriers to decide whether to remove existing closets or other priority spaces currently used for stowing a passenger's wheelchair in the cabin as long as the carrier has a workable, approved method for in-cabin wheelchair stowage. Additionally, the Department has decided not to distinguish between single-aisle and twin-aisle aircraft and has concluded that the seat-strapping method is suitable for use in both types of aircraft.

REGULATORY ANALYSIS AND NOTICES:

A. Executive Order 12866 (Regulatory Planning and Review), DOT Regulatory Policies and Procedures, and Executive Order 13563 (Improving Regulation and Regulatory Review)

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory

Review) and is consistent with the requirements in both orders. Executive Order 13563 refers to non-quantifiable values, including equity and fairness.

The Final Regulatory Evaluation estimates that the final rule will impose a maximum one-time potential cost of compliance of \$0.6 million present value over the next 20 years. This cost estimate represents the use of a worst-case approach that assumes a second seat-strapping kit will be used on all impacted aircraft as the result of carriers' adoption of the seat-strapping method as an alternative to permanent wheelchair stowage. The worst-case approach was used because the approach most likely resulting in lower potential cost estimates of extra or second seat-strapping kits is difficult to quantify monetarily due a multitude of uncertain factors (e.g., the frequency of requests for wheelchairs by passengers with disabilities on airlines, the frequency of full airline flights when wheelchair requests are made, the number of extra seat-strapping kits needed as standbys per airline flight). Additionally, this final rule requires carriers to label priority stowage space in their cabins. The total estimated cost of compliance with this part of the rule is expected to be minimal with the total discounted cost ranging from \$15,700 to \$21,400 between 2014 and 2033.

On balance, any costs incurred by carriers over the next 20 years for extra seat-strapping kits or for labeling priority stowage areas are expected to have an insignificant impact on the total potential benefits of the rule. Specifically, the benefits of allowing carriers to use seat-strapping will likely result in a total net revenue gain over a 20-year period of \$242-\$272 million present value. This represents revenue derived from seats that will not have to be removed in order to make space for a permanent wheelchair stowage area. There are also benefits with regard to the requirement that carriers identify the in-cabin priority stowage space such as ensuring that other passengers and/or airline employees know that manual wheelchairs and other

assistive devices have priority in the in-cabin closets of aircraft over other carry-on items or crew luggage and increasing the likelihood that manual wheelchairs and other assistive devices will be transported in the cabin rather than in the cargo compartment.

The rule is also expected to generate additional benefits to passengers with disabilities as a result of the second wheelchair requirement. A second wheelchair requirement would provide an additional passenger who may prefer in-cabin stowage for various reasons (for example, to avoid the possibility of damage occurring to the wheelchair in the cargo compartment or for a sense of reassurance by the visibility of his or her wheelchair) the opportunity to be able to request it as long as it would not displace other passengers. The potential benefits of a second wheelchair requirement are difficult to quantify monetarily because of a multitude of uncertain factors similar to those described previously for estimating potentially lower costs of extra seat-strapping kits. Although not used in this evaluation because of the lack of information, it is reasonable to assume carriers will only purchase the number of extra seat-strapping kits in accordance with their projected demand for more than one wheelchair on flights. A copy of the Final Regulatory Evaluation has been placed in the docket.

B. Executive Order 13132 (Federalism)

This Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This final rule does not include any provision that: (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this

area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because this final rule does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. §601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. A direct air carrier or a foreign air carrier is a small business if it provides air transportation only with small aircraft (i.e., aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds). *See* 14 CFR 399.73. The subject matter of this rule only affects aircraft with 100 or more passenger seats. Therefore, this requirement does not apply to small businesses.

E. Paperwork Reduction Act

This rule imposes no new information reporting or record keeping necessitating clearance by the Office of Management and Budget.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rule.

Issued this November 1, 2013, in Washington, D.C.

Anthony R. Foxx,
Secretary of Transportation.

List of Subjects in 14 CFR Part 382

Air carriers, Civil rights, and Individuals with disabilities.

For the reasons set forth in the preamble, the Department is amending 14 CFR Part 382, as follows:

PART 382-NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 41705.

2. Section 382.67 is revised to read as follows:

§ 382.67 What is the requirement for priority space in the cabin to store passengers' wheelchairs?

(a) As a carrier, you must ensure that there is priority space (i.e., a closet, or a row of seats where a wheelchair may be strapped using a strap kit that complies with applicable Federal Aviation Administration or applicable foreign government regulations on the stowage of cargo in the cabin compartment) in the cabin of sufficient size to stow at least one typical adult-sized folding, collapsible, or break-down manual passenger wheelchair, the dimensions of which are

13 inches by 36 inches by 42 inches or less without having to remove the wheels or otherwise disassemble it. This section applies to any aircraft with 100 or more passenger seats and this space must be other than the overhead compartments and under-seat spaces routinely used for passengers' carry-on items.

(b) If you are a carrier that uses the seat-strapping method to stow a manual passenger wheelchair, you must ensure that there is priority space for at least two such wheelchairs, if stowing the second passenger wheelchair would not displace passengers.

(c) If you are a carrier that uses a closet as the priority space to stow a manual passenger wheelchair, you must install a sign or placard prominently on the closet indicating that such wheelchairs and other assistive devices are to be stowed in this area with priority over other items brought onto the aircraft by other passengers or crew, including crew luggage, as set forth in § 382.123.

(d) If passengers holding confirmed reservations are not able to travel on a flight because their seats are being used to stow a passenger's wheelchair as required by paragraph (a) of this section, carriers must compensate those passengers in an amount to be calculated as provided for in instances of involuntary denied boarding under 14 CFR part 250, where part 250 applies.

(e) As a carrier, you must never request or suggest that a passenger not stow his or her wheelchair in the cabin to accommodate other passengers (e.g., informing a passenger that stowing his or her wheelchair in the cabin will require other passengers to be removed from the flight), or for any other non-safety related reason (e.g., that it is easier for the carrier if the wheelchair is stowed in the cargo compartment).

(f) As a carrier, you must offer pre-boarding to a passenger stowing his or her wheelchair in the cabin.

(g) As a foreign carrier, you must meet the requirement of this section for new aircraft ordered after May 13, 2009, or delivered after May 13, 2010. As a U.S. carrier, this section applies to you with respect to new aircraft you operate that were ordered after April 5, 1990, or which were delivered after April 5, 1992.

§ 382.123 [Amended]

3. In § 382.123, paragraph (c) is removed.

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